

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

DAVID GARCIA

Plaintiffs,

v.

W. JOHNSON, et al.

Defendants.

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Case No. 14 C 5177

Judge Joan B. Gottschall

MOTION FOR RELIEF FROM ASSIGNMENT PURSUANT TO LR 83.38

NOW COMES, Charles H. Cole, of Schuyler, Roche & Crisham, P.C., and in support of his Motion for Relief from Assignment pursuant to Local Rule 83.38(a)(5), states as follows:

1. On July 3, 2014, Plaintiff David Garcia ("Garcia") filed his Complaint. (Dkt. No. 1).
2. On July 3, 2014, Plaintiff filed a Motion for Appointment of Counsel. (Dkt. No. 4).
3. On December 23, 2014, this Court granted Plaintiff's Motion for the Appointment of Counsel and appointed Charles H. Cole to represent the Plaintiff. (Dkt. No. 30).
4. Also on December 23, 2014, this Court dismissed the Complaint on file without prejudice and ordered Mr. Cole to file an Amended Complaint within 60 days *if the Amended Complaint comports with appointed counsel's obligations under Rule 11 of the Federal Rules of Civil Procedure*. The Amended Complaint was due on February 20, 2015. (Dkt. No. 31). On February 17, 2015, this Court granted Plaintiff an extension of time, until April 20, 2015, to file his Amended Complaint. (Dkt. No. 33).

5. On January 29, 2015, Mr. Cole interviewed the Plaintiff as part of his Rule 11 duty to reasonably investigate the Plaintiff's allegations.

6. On January 26, 2015, Mr. Cole subpoenaed the Plaintiff's medical and disciplinary records from Menard Correctional Center.

7. On or about March 1, 2015, Mr. Cole received and reviewed Plaintiff's medical and disciplinary records.

8. Mr. Cole conducted extensive factual research regarding the merits of this matter, including reviewing records provided by Menard Correctional Center, and consulting with the Plaintiff about the factual background at issue in this litigation. Additionally, Mr. Cole conducted extensive legal research in connection with the merits of this matter.

9. Based upon his investigation, consultation with the client, and legal research, it is Mr. Cole's opinion that the plaintiff's claims or defenses are not warranted under existing law and cannot be supported by good faith argument for extension, modification or reversal of the existing law.

10. After conducting such investigation and research, Mr. Cole has contacted Mr. Garcia and advised him that based upon his legal obligations pursuant to Rule 11 of the Federal Rules of Civil Procedure, his investigation and the exercise of his independent legal judgment, that Mr. Cole would be filing a motion pursuant to Local Rule 83.38 seeking relief from assignment.

11. After making a good faith effort, Mr. Cole has come to the conclusion that this cause lacks sufficient merit to warrant Mr. Cole's continued representation of Mr. Garcia in this matter. Consequently, pursuant to Local Rule 83.38, Mr. Cole respectfully requests that an order

be entered granting him relief from this assignment, and that Mr. Cole's assignment as counsel for the plaintiff in this action be terminated.

CONCLUSION

WHEREFORE, for all the foregoing reasons, Charles H. Cole, respectfully request that this Court enter an Order granting him Relief from this Assignment pursuant to Local Rule 83.38(a)(5), and for such other and further relief this Court deems just and appropriate under the evidence and circumstances.

Respectfully submitted,

/S/Charles H. Cole
Bar Number 0482285
Attorney for Plaintiff
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